

**Remarks:**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 41 and 42 are currently being amended.

This amendment changes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Applicant has amended method claims 41 and 42 to clarify the location of the temperature sensor within the heater. After amending the claims as set forth above, claims 1-42 remain pending in this application.

The Examiner issued a First Office Action on August 9, 2005 rejecting claims 1-41. The Examiner rejected claims 1-41 under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,872,890 issued to LaCombe ("Lacombe"). The Examiner did not address or mention the status of claim 42.

The Examiner characterized LaCombe as disclosing a flow through tube made of solid material surrounding a heating rod within the flow path. The Examiner also asserted that LaCombe teaches a plurality of temperature sensors located to determine the temperature and flow of fluid at both the inlet and outlet of the flow path.

Notwithstanding the Examiner's assertions, Applicant respectfully traverses the rejection. All of the pending claims of the present application include an element directed to a temperature sensor located in the heater. However, the Examiner's application of LaCombe to the claims provides no discussion of the position of the temperature sensor. As claim 1 states, the heater is "arranged in the flow-through path, the fluid being able to flow past said heater for the purpose of heating up." The claims also include a temperature sensor which is described in claim one as being "positioned in the heater and in thermal contact with the at least one heating element." The current claims require the temperature sensor to be located in the heater, the heater itself being located in the flow path.

The application discusses at length the benefits which are derived from utilizing an embodiment of the invention where the temperature sensor is located within the heater. Paragraph [0035] discusses that positioning of the temperature sensor within the heater ensures “as a result of free positionability [within the heater] at least during the production that the optimum position of the temperature sensor can always be set for a specific type of basin and, therefore, the temperature monitoring function can again be ensured in an optimum manner.” LaCombe does not discuss the positioning of the temperature sensor within the heater. In fact, LaCombe clearly teaches away from such a design as can be seen in the figures by the placement of the thermostats (117 and 116) outside of the heater (13). In particular, Fig. 2 illustrates the heater of LaCombe and includes no temperature sensor. Rather, LaCombe teaches the use of a temperature sensor in thermal communication with the flow path (and heater). However, the temperature sensor is not positioned in the heater, but is rather outside of the heater.

Applicant respectfully submits that the device shown in Fig. 1 of LaCombe cannot reasonably be considered a heater as described and claimed in the present application, as that device is not capable of being positioned in a flow path. Rather the heater of LaCombe shown in Fig. 2 clearly does not include any temperature sensors, but instead teaches temperature sensors which are external to the heater (see Fig. 1, reference numbers 116 and 117). In fact, LaCombe teaches a distinctly different mechanism of measuring heat. The heating device of LaCombe determines the temperature of the fluid (or air) between the heater and the sensor, whereas the claims in the present application describe a device wherein the temperature sensor is positioned within the heater and does not measure the fluid. As Applicant states at paragraph [0083], the “temperature sensor 42 is therefore arranged in the heater 33 and measures the temperature in the heater 33.” In sharp contrast, the prior art, including LaCombe, teaches a temperature sensor for measuring the temperature of the fluid flow path, i.e., of the fluid under normal conditions or of air when fluid is not present. LaCombe specifically teaches that “first and second thermister elements 116, 117 are provided in respective first and second housings 110 disposed on either side of the heated zone 31 of the heater element 25” for forming a high limit thermostat loop and a desired temperature control loop respectively. (Col. 6, Ln. 7-10.)

For all of the above reasons, Applicant respectfully submits that claims 1-42 are allowable over the prior art. Applicant believes that the present application is in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.


The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

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Respectfully submitted,

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